

MT LEGISLATIVE HISTORY

Chapter 416 19 71

Bill H 333 S \_\_\_\_\_

Original bill & hist. C

H. Committee on Business and Ind.

S. Committee on Commerce and Labor

Hearing Date(s) Feb 05 C

Hearing Date(s) Feb 18 C

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Date Out Feb 05 C

Feb 18 C

Did this bill originate in an interim committee? Yes No

Committee \_\_\_\_\_

Report \_\_\_\_\_

February 5, 1971

House Bill 333 was presented by the chief sponsor, Rep. Kolstad. Other proponents were Les W. Alke, Chief Examiner, Office of Superintendent of Banks; Bob Burke and Wesley W. Wertz representing Montana Bankers Association (proposed amendments); Socs Vratlis representing Montana Retail Association; C. R. Fischer, Montana Chamber; Avis Ann Tobin representing Montana Hardware & Implement Association; John T. Cadby, Montana Auto Dealers Association; and Roger E. Clingman representing First National Bank of Missoula. There were no opponents.

Action was then taken on the following bills.

HB333...Rep. Spilde moved DO PASS AS AMENDED. The motion was seconded and carried.

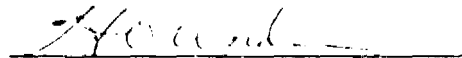
HB546...Rep. Spilde moved DO NOT PASS. The motion was seconded and carried.

HB541...Rep. Burnett moved DO PASS. Rep. Patrick seconded the motion, and it was carried.

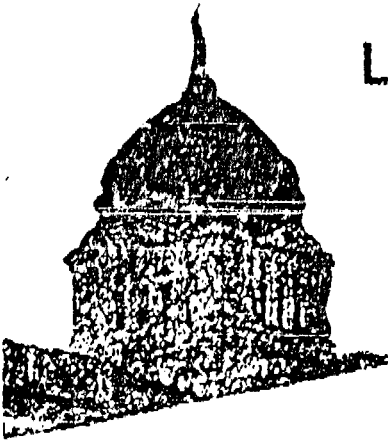
HB531...Rep. Burnett moved do pass, but then withdrew his motion. Action was passed on the bill for the day.

HB462...Rep. Laas moved DO PASS. The motion was seconded and carried.

The meeting adjourned.



H. O. WORDEN, Chairman



## LEGISLATIVE REPORT



P. O. BOX 442 HELENA, MONTANA 59601

Mr. Chairman, Members of this Committee:

My name is Socs Vratiss, registered lobbyist of record for the Montana Retail Association, and I appear here today in support of House Bill No. 333.

House Bill 333 is, in our opinion, a much-needed, and even necessary amendment to the Montana Retail Installment Sales Act of 1959. House Bill 333 seeks rate authorization for revolving charge accounts and the use of credit cards which, in most instances, are revolving charge accounts. And I call to your attention that more than 85% of all retail charge accounts in this nation today are revolving charge accounts.

My arguments are premised upon the long and presently existing practice in retailing, and with credit card issuers, which relies upon the common case law doctrine of "time-price differential." In this context, we are positively asking for statutory codification of the doctrine upon which existing practices are based and we submit that a realistic rate ceiling must be established.

If rate ceilings are fixed below costs incurred by the retailer who extends credit, he would be forced not to extend nearly as much credit or perhaps even go to what is commonly called the thirty-day open account, which is tantamount to cash; thus credit would be much less available. Or he would be forced to cover his costs by raising the cash price and charging for incidental services presently provided free. In the latter instance the cash customer would subsidize the credit customer. It would penalize the cash customer for an expense that should properly be borne by those who buy on credit.

Following the premise that retailers use their credit plans as a service and not as a means for obtaining profit, the request for 1½% per month ceilings represents the competitive rate which in most instances does not cover the cost of maintaining credit plans, according to the 1969 Touche, Ross, Bailey and Smart National Study on Credit.

The revolving charge account long ago became a modern way of dealing with credit purchases to the benefit of the consumer. Such accounts recognize the efficiency and convenience to be gained for establishing an open line of credit so that a customer may make periodic purchases in varying amounts, all under one contract.

Revolving charge accounts dispense with the inconvenience and expense of establishing a new credit sale agreement with each purchase a customer makes. Furthermore, it allows the customer to make several small purchases separately, without having to carry cash, and it allows him to delay payment for such items until his monthly bill is issued. And, more important, it allows the customer to make his or her own choice as to the method of payment that best suits the family budget -- and the customer makes that choice each time he or she receives a statement. Furthermore, no special arrangement or paper work is required to select or change the terms of payment -- this is accomplished automatically by the amount of the payment.

I would call to the committee's attention that Montana does have rate authorization for closed end retail installment contracts. If the state feels that such rate authorization is proper, it is logical and most practical to enact the proposed rate authorization in House Bill 333 for the markedly more widely accepted and much more convenient revolving charge account. It is illogical to think that the matter of form should dictate the validity of a transaction.

The revolving charge account allows the customer to pay for his purchases over a period of time, to adjust the payments on the account as is convenient to him and to add to his purchases as he wishes. Stated quite simply, the revolving charge account system allows a customer to pay for goods while he has the benefit of the use of the goods. The amount of periodic payment is controlled by the customer in a flexible manner as is convenient to his income and needs, thus adding further convenience for the consumer.

Other benefits accrue to the consumer under revolving charge accounts. If he desires to pay his periodic balance currently, he pays no service charge. If he desires to spread the payment of his bill over time and make partial payment upon it, he can do so. He has the option of paying his bill in full at any time, or of adding to it by making further purchases. The revolving charge account is strictly a convenience and a service to the customer. And this service imposes additional costs upon the retailer. The retailer must establish a system to cope with the customers' accounts. He must hire people to administer the system and provide the office space and equipment needed. Personnel are involved in the revolving charge account transaction from the time the sale is made by the sales person to the time the customer pays his bill. Additionally, the retailer who provides the benefits of credit buying is tying up a large portion of his capital. Money which might be invested in the business in other ways is used to finance the credit system.

The revolving charge account system is flexible, efficient and convenient, allowing consumers to pay for items while they have the use of them. It increases the consumer options.

If all consumers are to be treated fairly, the revolving credit system must pay for itself. Revolving charge account rate authorizations must be enough so that credit is widely available and so that higher retail prices, resulting in discrimination against cash customers, are not needed to accomplish this result.

I submit to this committee, and ask that it be made a part of the record of this hearing, a copy of an actual existing charge account from one of Montana's retailers showing the actual service charges and effective annual percentage rate on a revolving charge account, using the Adjusted Balance Method. The example covers a three-month period and I believe that it will be of the greatest of interest to this committee.

In closing, let me say that historically retailers have relied upon the "time-price differential" doctrine in operating their credit systems. We believe it is time that this doctrine be codified in Montana to clearly and forever authorize already existing practices based upon "time-price differential" doctrine, practices which, incidentally, have been the accepted practice in every state for the past twenty-three years.

In short, gentlemen, all that this bill seeks is rate authorization for retailers to enable them to be placed in the same category as banks, small loan companies and automobile dealers who have for many years been privileged to enjoy rate authorization under our statutes.

I sincerely hope that when this committee does rise and report it will recommend that House Bill 333 DO PASS.

PROPOSED AMENDMENTS TO H. B. NO. 333

On page 2 of the INTRODUCED BILL at line 20 after the words "credit card" insert the words and underlining: "issued by the retail seller or any other person"

On page 5 insert before the period at line 28 after the word "institutions" the following words and underlining: "except this act pertains to the extension of credit by such banks or other lending institutions pursuant to retail installment contracts or credit cards issued by such banks or other lending institutions"

NAME Forester BILL NO. 462  
ADDRESS Dist #9 DATE \_\_\_\_\_  
WHOM DO YOU REPRESENT? \_\_\_\_\_  
SUPPORT? ☒ OPPOSE? \_\_\_\_\_ AMEND? \_\_\_\_\_

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February 18, 1971

The Committee on Banking and Insurance met on February 18, 1971, at 10:00 o'clock A.M. in room 442. Roll call was taken and all members were present.

House Bill 333 was placed before the committee for consideration. Representative Kolstad of Liberty County appeared to explain the intent of the bill. Wesley W. Wertz, attorney for the Montana Bankers Association favored this bill with amendments. He said that credit is paid by the consumer no matter how you look at it.

Rodger Clingman of the First National Bank, Missoula; John Dowdall, State Bank Examiner; Les Alhi, Chief Examiner; and George Pendergast of the State Bank Examiner's Office appeared in favor of this bill.

Socs Vratils of the Montana Retail Association, stated that this bill would not be detrimental to anyone and that the customer has the opportunity to choose the merchandise he purchases and can be using it while paying for it. B. G. Havdahl of the Montana Petroleum Association also appeared in support of this bill.

Robert J. Emmons, attorney from Great Falls, opposed this bill. He stated that he made a personal study of revolving credit and that the law states that the legislature cannot regulate interest on money and this bill is against the statutes of Montana. He stated that this bill calls for 1 1/2% or 18% interest on long term credit and further calls for granting of attorney fees to the collector. He further advised that the Internal Revenue Service only allows a person to deduct six percent of the charge, yet the minimum charge on these credit cards is 50¢. He termed the credit card as "the narcotic of consumer field". He advised the committee that his law firm is presently instituting action against The Paris and is anticipating filing a class action against another credit card dealer in the very near future.

Several questions were posed to Attorney Wesley W. Wertz and Attorney Robert J. Emmons by the committee members. Proponents and opponents of this bill were dismissed from the room.

House Bill 430 was placed before the committee. Representative Fagg, sponsor of the bill, stated the intent of the bill. John Dowdall, superintendent of banks, advised the committee that House Bill 430 applied to extra-curricular accounts in schools and that the Bank Examiner's Office only examined these upon request and that these costs justified the increase in the Examiner's fee. He advised that fees have not been increased since 1959 and that the Examiner's Office requires appropriate funds to examine efficiently and secure capable people for their staff.

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insurance companies. This will give better safety to the working man and reward to the private contractor.

R. B. Easter of Toole and Easter Insurance Company, Missoula, appeared on behalf of the insurance industry and the construction industry in Montana in support of House Bill 185. He submitted a prepared statement to the committee in support of his position that House Bill 185 be passed favorably by the committee.

There was a period of questions and answers. Mr. Carden of the Industrial Accident Board responded that the State is obligated to write insurance and the only reason for cancellation of insurance would be lack of payment. An insurance company can be selective about whom they insure. It was also learned that payment under Plan 2 is just as promptly received as payment under Plan 3.

Senator Hafferman was opposed to House Bill 185 as he felt his people were well taken care of under the state insurance accident fund.

Proponents and opponents to this bill were dismissed from the room and the members discussed the bill.

House Bill 433 was placed before the committee for consideration. Senator Groff moved that House Bill 433 be not concurred in. This motion was seconded by Senator Hazelbaker, put to a vote of the committee and carried unanimously.

No action was taken on House Bill 185 at this time.

House Bill 432 was discussed by the committee. Senator Groff moved amendments changing the fees from \$100 to \$80 and for the rural fire districts and irrigation districts from \$100 to \$70. These amendments were seconded by Senator Goodheart, put to a vote of the committee and carried. Senator Hafferman proposed amending the 12¢ per one thousand total assets to 10¢. This motion was seconded by Senator Carl, put to a vote of the committee and carried. Senator Groff also proposed amending the title of the bill which motion was seconded and carried. Senator Groff then motioned that House Bill 432 Be Concurred In As Amended. This motion was seconded by Senator Carl, put to a vote of the committee and carried with Senator Hafferman requesting that his vote be recorded as No on House Bill 432.

Amendments were proposed to House Bill 430 after discussion by the committee members. Senator Groff moved that House Bill 430 Be Concurred In as Amended. This motion was seconded by Senator Goodheart, put to a vote and carried.

House Bill 333 was discussed by the committee members and amendments were made by Senator Groff and Hafferman and seconded by



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Senator Goodheart, put to a vote of the committee and carried. Senator Broeder moved that House Bill 333 be concurred in as amended. His motion was seconded by Senator Carl, put to a vote of the committee and carried. Senator Shea requested that his vote be recorded as opposing passage of House Bill 333.

Action was delayed on House Bill 512 in order to receive testimony from the sponsor of this bill. A hearing was set on this bill for Tuesday, February 23.

Senator Groff moved that House Bill 424 Be Concurred In. This motion was seconded by Senator Shea, put to a vote of the committee and carried unanimously.

There being no further business before the committee members, motion was made to adjourn , which motion was seconded and carried.

  
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Senator Percy Devolfe-Chairman

☐ BE NOT ADOPTED

MR. President.....

We, your committee on BANKING AND INSURANCE

having had under consideration..... HOUSE Bill No. 333

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS 74-652 AND 74-608, R.C.M. 1947, RELATING TO RETAIL INSTALLMENT SALES."

Respectfully report as follows: That..... HOUSE Bill No. 333

as amended as follows:

Amend Section 2, sub-paragraph (a), page 5, line 3 of the Approved Committee of the whole bill, before the word, "including" by inserting the word: not

And amend Section 2, sub-section (ii), page 5, lines 12 and 13 of the Approved Committee of the whole bill, by omitting that sub-section in its entirety

And amend Section 2, sub-section (iii), page 5, line 14 of the Approved Committee of the whole bill, by changing the numerals, "iii", to the numerals, "ii"

DO PASS:

AND AS AMENDED BE CONSIDERED  
CONCURRED IN

Dewolfe

**Exception—social security.** This disqualification does not extend to the receipt of benefits under the Federal Social Security Act, as amended,

**Pregnancy.** (h) For any week wherein claimant leaves her most recent employment during pregnancy, and due to such pregnancy, and such disqualifications shall continue through the period of pregnancy unless claimant presents evidence of her physical ability to work at such employment. At any time after the seventh month of pregnancy a claimant, to establish eligibility, must present evidence of physical ability to work at such employment. Further, at any time during the first two (2) months following childbirth, a claimant, to establish eligibility, must present evidence of her physical ability to work at such employment. In any of the cases set forth hereinbefore, such evidence of eligibility must be in the form of a certificate of a duly licensed physician that such claimant is physically able to work at her most recent employment, and such evidence must be presented as often as requested by the commission.

**Evidence of physical ability to work.**

Approved March 18, 1971

#### CHAPTER NO. 416

An Act to Amend Sections 74-602 and 74-608, R.C.M. 1947, Relating to Retail Installment Sales.

*Be it enacted by the Legislative Assembly of the State of Montana:*

**Amending clause.** Section 1. Section 74-602, R.C.M. 1947, is amended to read as follows:

**Definitions.** "74-602. **Definitions.** Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

**"Goods."** (a) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal, but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable therefrom.

(b) "Services" means work, labor and services furnished in the delivery, installation, servicing, repair or improvement of goods.

"Services."

(c) "Motor vehicle" means any new or used automobile, mobile home, motorcycle, truck, trailer, semi-trailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting however, any vehicle which runs only on rails or tracks or in the air.

"Motor vehicle."

(d) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

"Retail buyer" or "buyer."

(e) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

"Retail seller" or "seller."

(f) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of goods or services, by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

"Retail installment transaction."

(g) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made thereunder from time to time pursuant to which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller, and under the terms of which a finance charge, as defined in this section may be computed in relation to the buyer's balance in the account from time to time.

"Retail charge account agreement."

(h) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state pursuant to which a buyer promises to pay in one or more deferred installments the time sale price of goods and/or services. The term includes a chattel mortgage, conditional sales contract and a

"Retail installment contract" or "contract."

contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

"Cash sale price."

(i) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail installment transaction, if such sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license and official fees, and cash sale prices for services, if any, and for accessories and their installation and for delivery, servicing, repairing or improving the goods.

"Official fees."

(j) "Official fees" means the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

"Principal balance."

(k) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

"Finance charge."

(l) "Finance charge" means the amount, as limited by section 74-608, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

"Time sale price."

(m) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits if a separate identified charge is made therefor and the amounts of the official fees and the finance charge.

(n) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, Morris Plan company or savings and loan association, if so engaged. The term shall not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

"Sales finance company."

(o) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge account agreement, or a person who establishes and administers retail charge account agreements with retail buyers, the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred, or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

"Holder."

(p) "Person" means an individual, partnership, corporation, association, and any other group however organized.

"Person."

(q) "Superintendent" means the state superintendent of banks of the state of Montana.

"Superintendent."

(r) Words in the singular include the plural, the masculine includes the feminine and the neuter, and vice versa.

Word inclusions.

(s) This act shall have no application to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by such banks or other lending institutions except this act pertains to the extension of credit by such banks or other lending institutions pursuant to retail installment contracts or credit cards issued by such banks or other lending institutions."

Exemptions.

Exception.

Section 2. Section 74-608, R.C.M., 1947, is amended to read as follows:

Amending clause.

"74-608. Finance charge limitation. (a) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall not exceed the following schedule:

Schedule of maximum finance charges—retail installment contracts.

Motor vehicles.

## (1) As to motor vehicles:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—seven dollars (\$7) per one hundred dollars (\$100) per year.

Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two (2) years prior to the year in which the sale is made—nine dollars (\$9) per one hundred dollars (\$100) per year.

Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than two (2) years prior to the year in which the sale is made—eleven dollars (\$11) per one hundred dollars (\$100) per year.

Other services and goods.

(2) As to services and goods other than motor vehicles: (i) On so much of the principal balance as does not exceed three hundred dollars (\$300), eleven dollars (\$11), per one hundred dollars (\$100) per year; (ii) if the principal balance exceeds three hundred dollars (\$300), but is less than one thousand dollars (\$1,000), nine dollars (\$9) per one hundred dollars (\$100) per year on that portion over three hundred dollars (\$300); (iii) if the principal balance exceeds one thousand dollars (\$1,000), seven dollars (\$7) per one hundred dollars (\$100) per year on that portion over one thousand dollars (\$1,000).

Computation on principal balance.

(b) Such finance charge shall be computed on the principal balance as determined under section 7(f) [74-607(f)] of this act on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of twenty dollars (\$20) may be charged on any retail installment contract.

Minimum charge \$20.

Finance charge may yield monthly rate.

(c) When a retail installment contract provides for payment, other than in equal successive monthly installments, the finance charge may be a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (a) and (b) hereof, having due regard for the schedule of payments in the contract.

(d) Notwithstanding the provisions of any other law, a retail charge account agreement may provide for, and the seller or holder may charge, collect and receive a finance charge, as specified herein, for the privilege of paying in installments thereunder. The finance charge may be computed from month to month (which need not be a calendar month) or other regular billing cycle period by applying a rate not to exceed one and one-half percent (1 1/2%) for each such monthly period to an amount (not including any unpaid finance charge) not in excess of the greatest of:

Retail charge account agreement may provide monthly finance charge not to exceed 1 1/2%.

Limitations.

(i) the average daily balance in the account in the billing cycle period; or

(ii) the median amount within a ten dollar (\$10) range within which such average daily balance or beginning balance falls, provided the seller applies the same rate of finance charge to all such balances within such range.

(e) If the finance charge so determined pursuant to (d) above, for such monthly period is less than fifty cents (50¢), a maximum finance charge not in excess of fifty cents (50¢) may be charged, received and collected for such period."

Where less than 50c—maximum charge 50c per month.

Section 3. Effective date and contracts executed prior thereto.

Effective date.

This act shall take effect on July 1, 1971. Provided, however, that section 2 hereof shall govern the finance charge to be charged, collected and received on or after such effective date under any retail charge account agreement, whether entered into before or after such date. This act shall not apply to suits pending before the effective date hereof.

July 1, 1971.

Pending suits exempt.

Approved March 18, 1971.

## CHAPTER NO. 417

An Act to Establish Minimum Wages and Hours for Employees in the State of Montana; Delegating to the Commissioner of Labor the Duty of Administering the Act; and Providing Enforcement.